

**Objection to the Issuance of Sanitary Sewer Construction Permit Approval No. 19748
Smith Road Residence Sanitary Sewer
Bloomington, Monroe County, Indiana
2010 OEA 187, (10-W-J-4427)**

OFFICIAL SHORT CITATION NAME: When referring to 2010 OEA 187 cite this case as
Raymond Moore Enterprises, Inc., 2010 OEA 187.

TOPICS:

late
postmark
dismissal
Raymond Moore Enterprises, Inc.
I.C. § 4-21.5-3-7(a)(3)(A)
315 IAC 1-3-3(c)

PRESIDING JUDGE:

Catherine Gibbs

PARTY REPRESENTATIVES:

IDEM: Steven Griffin, Esq.
Petitioner: Frank Buffetta, pro se
Permittee: Raymond Moore Enterprises, Inc.

ORDER ISSUED:

November 12, 2010

INDEX CATERGORY

Water

FURTHER CASE ACTIVITIY:

[none]

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4. The Petitioner learned of the Approval on or about September 27, 2010.

Applicable Law

The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to this controversy pursuant to I.C. § 4-21.5-7-3.

The Administrative Orders and Procedures Act (I.C. § 4-21.5, otherwise known as AOPA) governs the procedure for appeals of agency decisions. Specifically, I.C. § 4-21.5-3-7(a)(3)(A) states that a Petition for Review must be filed within fifteen (15) days after the person is given notice of the order.

The OEA has promulgated a rule, 315 IAC 1-3-3(c), relating to the filing of petitions for review. 315 IAC 1-3-3(c) states that:

The filing of a document with the office is complete on the earliest of the following:

- (1) The date on which the document is delivered to the office.
- (2) The date of the postmark on the envelope containing the document if the document is mailed to the office by United States mail.

CONCLUSIONS OF LAW

1. The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to I.C. § 4-21.5-7-3.
2. Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.
3. The OEA does not have jurisdiction to hear appeals that are not timely filed. Objections to the issuance of this Approval had to be filed within fifteen (15) days of July 30, 2010. The Petitioner did not file a timely petition within this time frame.
4. However, the Petitioner did not receive notice of the Approval. He did not learn of this Approval until after the appeals period had run. In his petition, the Petitioner states “I found out about the project approximately one week before the digging began, which was on or about September 27, 2010.” Therefore, the petition had to be filed within fifteen days of the Petitioner learning of the Approval, on or before October 12, 2010.
5. Once he knew of the Approval, he was required to file his petition within fifteen days of when he learned of the Approval. If he had filed within fifteen days of learning of the Approval, the issue of whether he was entitled to notice would be relevant. However, because he did not timely file, it is irrelevant whether the Petitioner was entitled to notice and didn’t receive it.

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6. The OEA received the petition for review on November 5, 2010. The petition was dated October 25, 2010 and sent by U.S. Mail postage prepaid. As the petition was not postmarked, the OEA filed the petition as of the date that it was received.
7. The petition was not filed within fifteen days of the Petitioner learning of the Approval. He failed to timely file his petition, regardless of whether the petition was considered filed as of October 25, 2010 or November 5, 2010.

FINAL ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition for Review filed by Frank Buffetta is **DISMISSED**.

You are hereby further notified that pursuant to provisions of I.C. § 4-21.5-7-5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of I.C. § 4-21.5. Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 12th day of November, 2010 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge